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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------|
| 09/052,325 | 03/31/1998 | JOHN E. STOCKENBERG | E0295.70266US00 | 9015 |
| 46630 | 7590 | 05/21/2007 | | |
| EMC Corporation c/o WOLF, GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON, MA 02210-2206 | | | EXAMINER COLBERT, ELLA | |
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| | | | 3694 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 09/052,325 | Applicant(s) STOCKENBERG ET AL. | |
| | Examiner Ella Colbert | Art Unit 3694 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-20 are pending. Claims 1, 4, 6, 8, 10, 12, 13, and 17 have been amended in this communication filed 02/26/07 entered as Response After Non-Final Action and New or Additional Drawings.
2. The Objection to the Drawings still remains as set forth here below.
3. The Objection to the Specification has been overcome by Applicants' amendment to the Specification and is hereby withdrawn.
4. The Claim Objections for Claims 8, 12, and 13 have been overcome and are hereby withdrawn. However, claim objections still remain as set forth here below.
5. Claim 15 still remains rejected under 35 USC 112 First Paragraph as set forth here below.
6. The 35 USC 112 second paragraph rejection for claims 1 and 17 has been overcome in part by applicants' amendment to the claims and is hereby withdrawn. However, the 35 USC 112 second paragraph rejection for claims 1, 6, 15, and 17 still remains in part as set forth here below.

Drawings

7. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because drawing figures 3 and 4 are slanted on the page. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Objections

8. Claims 1, 6, 13-17 and 20 are objected to because of the following informalities: Claims 1, 6, 14-17, and 20 recite "backup and/or restore". These claims should recite "backup and restore" or "backup or restore". Claim 13, line 9, recites "mechanism of said fourth pair of communication mechanism to each other ...". This line should recite "mechanism of said fourth pair of communication mechanisms to each other ...". Claim 17 has a similar problem reciting in line 13 "which of the first communication mechanism and the second communication mechanism". This line should recite "which of the first communication mechanisms and the second communication mechanisms". Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim limitations reciting "dynamically created communication mechanism" which is not described or discussed in the Specification or in the Drawings. Subject matter cannot be in the claims which is not disclosed or described in the Specification or shown in the drawings. There is nothing in the

Specification or the Drawings that says "dynamically created communication mechanism". What makes the communication mechanism dynamically created as opposed to the communication mechanism being created?

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 1, 5, 6, 15, 17, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear, vague and very broadly interpreted in the claim language when the claim recites "backup and/or restore". Either claim recites "backup and restore or backup or restore operation".

Claims 1, 6, and 17 recites the limitation "a backup and/or restore operation" in the claim limitation and the recitation of "the backup and/or restore operation" is not found any place else in the claim limitations. Claim 6 in the preamble recites "with backup and/or restore operation" and in the body of the claim recites "a backup and/or restore operation". The preamble should recite "a backup and/or restore operation" and the body of the claim should recite "the backup and/or restore operation". There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites "allows information to be transferred ...". "Allows" is not considered a positive claim recitation. The claim would be better recited as "has information to be transferred ..." or "contains information to be transferred ...".

Claims 2-14, 16, and 18-20 are also rejected because of their dependency from a rejected base claim.

Response to Arguments

13. Applicants' arguments filed 02/26/07 have been fully considered but they are not persuasive.

Issue no. 1: Applicants' argue: Examples of embodiments meeting the claim limitations of claim 15 are shown in the drawings in Fig. 5, information about a dynamically created communication mechanism is sent at step 196 from a client and received at a server at step 224 and this information is used in the creation of a socket, as illustrated by steps 228 and 230. That socket created, based on the dynamically allocated port, is used for communication as depicted in step 234 and subsequent steps has been considered but is not persuasive. Response: Nothing in the Specification or the Drawings states anything about a dynamically created communication mechanism based on a created socket with a dynamically allocated port. One would not indeed interpret this as being a dynamically created communication mechanism based on a created socket with a dynamically allocated port. What makes this a dynamically created communication mechanism based on a created socket with a dynamically allocated port as opposed to a created communication mechanism or an allocated port based on a created socket?

Issue no. 2: Applicants' argue: Applicants' respectfully disagree that claims 1, 15, and 17 need to recite at least one other "backup and/or restore operation". Response: The Examiner respectfully disagrees and submits that the claim limitations are not in

agreement with Applicants' Specification. If Applicants' want both in the claim language, the Specification needs to be amended accordingly because the Specification recites "backup (or restore)" on page 4, lines 24, 25, and 27 and "backup or restore operation" on page 11, lines 16 and 17. No place in the Specification does the Specification recite "backup and/or restore".

Inquiries

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 9, 2007


ELLA COLBERT
PRIMARY EXAMINER